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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD

Report on the human rights situation in the Republic of Equatorial
Guinea submitted by Mr. Alejandro Artucio, Special Rapporteur of
the Commission, pursuant to Commission resolution 1998/71

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Introduction

1. The situation of human rights in the Republic of Equatorial Guinea has been considered publicly by the Commission on Human Rights since 1979. At its forty-ninth session, in resolution 1993/69, the Commission requested its Chairman to appoint a special rapporteur of the Commission with a mandate to make a thorough study of violations of human rights by the Government of Equatorial Guinea; in 1993 the Chairman of the Commission appointed Mr. Alejandro Artucio as the Special Rapporteur.

2. Also in 1993, by agreement between the Centre for Human Rights and the United Nations Development Programme (UNDP), Mr. Eduardo Luis Duhalde Hubert was appointed as the Human Rights Consultant in Equatorial Guinea for the purpose, *inter alia*, of assisting the Special Rapporteur in all respects, and in particular providing him with reliable and comprehensive information collected *in situ* on the human rights situation, and helping the Special Rapporteur to define, in agreement with the Government of Equatorial Guinea, the most appropriate legislative and institutional framework for ensuring an effective improvement in the human rights situation in that country.

3. At its fifty-fourth session, the Commission on Human Rights considered the fifth report of the Special Rapporteur (E/CN.4/1998/73 and Add.1) and on 21 April 1998 adopted resolution 1998/71 entitled "Situation of human rights in Equatorial Guinea and assistance in the field of human rights". The present report, submitted pursuant to that resolution, sets out the results of the Special Rapporteur's ninth mission to Equatorial Guinea, the purpose of which was both to verify the effective exercise of human rights in the country and the implementation of the various recommendations made by the Commission on Human Rights, and also to gather information about the progress of democratization.

4. The Special Rapporteur wishes to point out that this report makes various references to the report of the previous year (E/CN.4/1998/73 of 13 January 1998, and E/CN.4/1998/73/Add.1 of 1 April 1998), of which the observations remain valid.

I. IN SITU ACTIVITIES

5. The Special Rapporteur undertook his ninth mission to Equatorial Guinea from 1 to 12 December 1998. As on previous missions, he was accompanied by the Human Rights Consultant, Mr. Eduardo Luis Duhalde Hubert, who provided valuable support. During its visit, the mission was received by the following dignitaries: H.E. Miguel Oyono Ndong Mifumu, Deputy Prime Minister and Minister for Foreign Affairs and International Cooperation; H.E. Angel Esono Abaha, Minister of the Interior and Local Communities; H.E. Rubén Mayé Nsue Mangue, Minister of Justice and Worship; H.E. Melanio Ebendeng Nsomo, Minister in Charge of National Defence; H.E. Manuel Nguema Mba, Deputy Minister for National Security; and H.E. Margarita Alene Mba, Minister for Social Affairs and the Status of Women. His Excellency Mr. Obiang Nguema Mbasogo, the President of the Republic, was unable to receive the mission because he was out of the country at the time.

6. The meetings took place in an atmosphere of understanding and cordiality, and reviewed a number of situations in the country. The Special Rapporteur wishes to express his gratitude to the authorities of the Republic of Equatorial Guinea and to stress most especially that they provided all the necessary facilities for him to carry out his mission, enabling him to travel anywhere and talk to anyone he wished.

7. The mission travelled to the island of Bioko and made contact with the local authorities and members of civil and political society, particularly in the capital city of Malabo. In addition, it went to the mainland region, where in the city of Bata it spoke to the Governor and was also able to meet various personalities of civil society. It then travelled further inland for a working meeting with the peripheral authorities in Niefang that was attended by the deputy governor, the military commander, the police commissioner and the district judge. It had a constructive dialogue with these authorities on the question of enhancing respect for human rights. In the context of its activities, the mission made contact with all the opposition political forces and with the political parties forming part of the Government. It visited the public prisons and general police stations of Malabo and Bata, including the gendarmerie premises in the latter city, and was able to talk privately with the inmates.

8. Desiring likewise to obtain information about the human rights situation and the progress of democratization, the mission contacted the diplomatic representatives of the main aid donating countries accredited in Malabo, in particular Mr. Jacobo González de Arnau, the Ambassador of Spain; Mr. François Breton, the Ambassador of France; and Mr. Ignacio Sobrino, the representative of the European Union. It also contacted the representative offices of the organizations of the United Nations system, such as the World Health Organization (WHO), the United Nations Food and Agriculture Organization (FAO) and the United Nations Children's Fund (UNICEF). In addition, it remained in permanent contact with Ms. Sylvie Kinigi, the UNDP Resident Representative in Malabo, to whom it is grateful for her invaluable support.

9. The Special Rapporteur wishes at the outset to present some of the findings of his investigation:

- (a) He notes a disturbing lack of progress towards democratization;
- (b) With regard specifically to human rights, after the attempted rebellion of 21 January 1998 (see E/CN.4/1998/73/Add.1), there has been a setback with cases of violations of those rights affecting not only individual guarantees but also the institutional and social life of Equatorial Guinea;
- (c) He feels bound to reiterate the concern expressed in Commission resolution 1998/71 over "the continuing existence of deficiencies and conditions that lead to violations and abuses of human rights, including cases of prolonged incommunicado detention". Torture also appears to be a very frequent practice during police interrogations;

(d) In order to overcome the difficulties, intensive technical assistance will be needed from the Office of the United Nations High Commissioner for Human Rights, including training courses, seminars and workshops, with a view to removing the major political, cultural and social obstacles to the consolidation of the democratic process and the effective exercise of human rights.

10. As the Special Rapporteur told the Commission on Human Rights in April 1998, what happened in January 1998 confirms the conviction expressed in his earlier reports regarding the precarious nature of the progress achieved in the observance of human rights and fundamental freedoms. Accordingly, he advised the Commission not to relax its monitoring of the situation, as any crisis might mean an immediate regression, depriving the population of all legal protection, and pose the risk of a return to practices that violate human rights, especially torture of detainees, arbitrary detention and limitations on the parties' political action.

11. This confirms the weakness of Equatorial Guinea's civil society and in general of its political parties, which do not seem to be sufficiently effective to consolidate the democratic advances or to prevent the regressions mentioned above. Reference should also be made to the low level of activity of the opposition political parties, which allows the national political stage to be occupied almost exclusively by the Government and its political supporters, to the detriment of a plural and democratic society. This situation militates against the possibility that the legislative elections originally scheduled for November 1998 and presumably to be held in 1999 will take place in a climate of full civil liberties and the effective exercise of political rights.

12. With regard to the above, there have not been sufficient efforts or effective measures by the Government to replace the authoritarian components of its system of organization with the elementary principles characteristic of any pluralist and democratic society, this being most apparent at the middle levels of the State and particularly in local administrations. The underdevelopment of civil society is due in large measure to the lack of institutions that would constitute a vigorous social network (professional and cultural associations, trade unions, etc.) and no steps have been taken by the Government to promote them. The circulation of press organs is not authorized, permission is not given for the functioning of new non-governmental human rights organizations, which have been waiting for years to be recognized, the movements of the population within the country are controlled by military checkpoints, there is oppressive supervision of all private activity and in practice political dissent is viewed almost as a crime, particularly by the peripheral authorities of the mainland region. The Special Rapporteur notes with concern the repeated comments of Equatorial Guinea's authorities describing international human rights law as something imposed from outside with "obscure designs".

13. Two main features which have also seen no change are the lack of independence in the administration of justice with respect to the political branch and the degree of impunity enjoyed by State officials regarding abuses of human rights and fundamental freedoms. This constitutes a serious hindrance to the enjoyment of those rights, as was reaffirmed in the Vienna

Declaration and Programme of Action (part II.E, paragraph 91). The problem of impunity was addressed in the agreements reached between the Government and the political parties and there is a formal commitment - set forth in presidential decrees - to impose administrative and judicial penalties on those found guilty of human rights violations. However, there are no records of this commitment having been put into effect. The Minister of the Interior and Local Communities indicated in this connection that various agents of the State - police and military personnel - had been punished for abuse of authority, but he did not act on the Special Rapporteur's request for copies of the decisions taken to be made available to him.

14. The expectations and good wishes expressed in the Special Rapporteur's previous report that gradual progress would continue to be made towards a substantial change in the prevailing situation have unfortunately not been realized, since no significant advances are apparent in structural terms. The international bodies that have recently undertaken ad hoc missions to Equatorial Guinea or have produced socio-economic studies of the country agree in their description of the situation and make very similar assessments. This was the case with the identification mission of the Commission of the European Union in an August 1998 report on human rights, the process of democratization, the rule of law and the electoral process in the Republic of Equatorial Guinea (this document is available for consultation in the files of the Office of the United Nations High Commissioner for Human Rights).

II. LEGISLATIVE ACTION

15. Notwithstanding the enormous difficulties caused by the failure to publicize legislation and the lack of cooperation from the authorities in this respect, the mission was able to note the enactment of the following laws in the course of 1998 (see also paragraph 23):

(a) Amnesty Law (No. 1/1998 of 14 January) which covers crimes up to 26 April 1997;

(b) Law amending the Law on the Right of Complaint and Petition (No. 2/1998 of 15 January);

(c) Law amending the Electoral Law (No. 3/1998 of 19 January), which has an "additional provision" that suspends, for the 1998 legislative elections, the possibility of creating political coalitions between the legalized parties, a right that was granted by article 48 of Law No. 3 of 12 January 1993;

(d) Law amending the Law on Meetings and Demonstrations (No. 4/1998 of 14 January);

(e) Law amending the Law on the Financing of Political Parties (No. 5/1998 of 19 January);

(f) Law amending the Law on Political Parties (No. 8/1998 of 26 January);

(g) Constitutional Law which amends article 4 of the Fundamental Law of the State, establishing that "the official languages of the Republic of Equatorial Guinea are Spanish and French. The aboriginal languages are recognized as integral parts of the national culture" (Constitutional Law No. 1/1998 of 21 January);

(h) Law on the Recognition and Functioning of Non-Governmental Organizations (passed in December 1998, text not yet made public);

(i) Law on the National Budget.

III. SITUATION OF CIVIL AND POLITICAL RIGHTS

A. Opinion of the Government

16. The Special Rapporteur extensively analysed the situation regarding the process of democratization and governability with the highest authorities. The latter told the mission that the Government of Equatorial Guinea regards itself as the target of an international campaign of insults and disparagement that is making it difficult for the State and society to function properly. They accused some of the opposition parties of being involved in the campaign, which is in their view based solely on false information. The high-ranking representatives interviewed denied the accusations made in turn by the opposition forces against the Government, explaining that they were fully implementing the Agreements of 26 April 1997 (see E/CN.4/1998/73, paragraphs 22-25). From what the Special Rapporteur was able to determine, it may be said that the Government of Equatorial Guinea has been complying with these agreements, although there has been a pronounced delay in their implementation, a matter which, as already stated, is most disturbing inasmuch as the measures agreed are of the greatest importance for achieving a climate of détente with sufficient safeguards before the legislative elections due to be held on a date not yet fixed in 1999.

B. Activities of the political parties and compliance with the 1993 and 1997 agreements

17. Insofar as his specific mission is concerned, the Special Rapporteur concentrated on verifying implementation of the recommendations made by the Commission on Human Rights in previous years, especially those contained in its latest resolution 1998/71, and observance of the agreements reached between the Government and the political parties (see E/CN.4/1998/73, paragraphs 22-25). To this end, the Special Rapporteur invited all the recognized parties, including the ruling party (Partido Democrático de Guinea Ecuatorial, PDGE), to an information meeting at the UNDP office in Malabo, a practice that has been customary since this Special Rapporteur's first visit to the country, as noted in each of his reports. The meeting brought together all the parties except for PDGE, which preferred not to attend.

18. All the opposition political parties interviewed unanimously complained of the Government's non-fulfilment of the April 1997 agreements and its lack of political will to implement them. They stated that a great opportunity to consolidate democracy in the country had been missed, and were sceptical about the transparency of the future legislative elections unless there was a change

in the Government's attitude. It will be recalled that the talks held between 10 February and 25 April 1997 had yielded the "Document on the Evaluation of the National Pact and Legislative Agreements", giving rise to great expectations of a decisive step forward in the process of democratization and in the conditions of governability of the country.

19. In this connection, the opposition political parties specified, orally and in written notes in the possession of the Special Rapporteur, that:

(a) Despite the issuance of the decrees forming part of the 1997 Agreements and some of the legislative amendments granted, most of these instruments have not been put into effect;

(b) The Supervisory and Monitoring Commission for the 1993 National Pact and the Supervisory and Monitoring Commission for the 1997 Agreements are inactive, except when their functioning is in the Government's interests;

(c) Restrictions on civil liberties continue to apply in the mainland region and it remains impossible to gain access throughout the country to the media (radio and television) upon which the Government relies;

(d) Their members are still being arbitrarily detained for short periods as a Government tactic to dissuade them from engaging in political activities, and their employees in the State administration are continuing to be dismissed as political opponents;

(e) The existence of physical barriers controlled by the military and the police hampers freedom of movement;

(f) Action has still not been taken on applications by new political parties for recognition in accordance with the law;

(g) Regarding the preparation and thorough review of the census of the electorate, the census-taking tasks which involved the political parties are being completed without their being able, as planned, to exercise the supervision called for in the Agreements with respect to the definitive voters' lists. In this connection, they expressed their concern about the possible inclusion or exclusion of citizens during the census;

(h) The Government has not honoured its undertaking to call legislative elections 60 days before the expiry of the term of office of the present legislature;

(i) The Government's declared intention to locate polling stations in military districts undermines the safeguard of the secret ballot and serves the purpose of keeping a watch on the actual casting of votes and inducing a public ballot by means of coercion.

C. Freedom of movement

20. Freedom of movement in Equatorial Guinea remains difficult because of the existence of barriers on roads in the interior, as can be attested by this mission, which had to wait patiently at such checkpoints for permission to

continue its journey. Decree No. 73 of 13 May 1997 prohibited the peripheral authorities from erecting barriers in the national territory so as not to obstruct the free movement of persons, goods and propaganda material for the political parties. The ban does not include barriers erected for national security or customs control purposes. The Special Rapporteur has received information that these barriers continue to cause regular incidents with members of the opposition parties, both in the mainland region of Río Muni and on the island of Bioko; the Government's argument is that they are necessary to protect national security.

D. Freedom of the press

21. The Press Association of Equatorial Guinea (ASOPGE), an NGO recognized by the authorities, submitted a report to the Special Rapporteur enumerating the applications not processed by the Government bodies to authorize the appearance of the following periodicals: El Tiempo (application of 11 July 1996); La Opinión (application of 22 April 1998); and La Hoja del Periodista, the organ of ASOPGE (application of 6 March 1998). It should be noted that the legislation in force is contained in Law No. 6/1997 of 30 May on the Press, Publishing and the Visual Media. This unduly casuistic text includes a statement of "publishing principles" which are open to subjective interpretation and whose violation gives rise to criminal, civil and administrative penalties. It also establishes a system of control over the media (registration which can be refused, prior lodging of copies, etc.) and a code of penalties. In short, this law could be used to condition the activities of the free press at the will of the Government.

22. A serious episode infringing the freedom of the press and contrary to the free dissemination of information occurred in early November 1998, when four members of the Convergencia para la Democracia Social (CPDS) party attempted to bring into Equatorial Guinea from Gabon 60 copies of a book published in Spain under the title "Equatorial Guinea at the crossroads". The incident, which is described in paragraph 37 of this report, ended with the detention of the four persons at the Bata police station in the Río Muni region.

E. Violations of the right to information

23. There is no regular publication of laws, decrees and governmental acts, which are not made known either to the citizens or to the spheres of public administration, especially the peripheral authorities - which take advantage of this lack of information to deny petitioners their lawful rights. The non-publication of laws, decrees and regulations (on a periodic or regular basis) is, as the Special Rapporteur has stated in his previous reports, a source of grave legal insecurity. It should be noted that, as on previous occasions, the mission found it difficult to obtain the texts of the laws and decrees issued in 1998, and only some of them were made available (see also paragraph 15).

F. Rights to integrity, security and freedom of the person -
Events after 21 January 1998

1. The attacks of January 1998

24. As explained in his previous report to the Commission (E/CN.4/1998/73/Add.1), in which he set out the results of his eighth mission to the country (22-25 March 1998), various acts of violence of considerable gravity occurred on the island of Bioko in the early hours of 21 January 1998, when an armed group of civilians made successive attacks on the military posts of Moka and Lubá, and on the police checkpoint at Banapá, near Malabo, where a member of the police force was seriously wounded. In the case of Lubá, the armed action spread to the electric power service and the home of the Deputy Governor. As a result of these actions, three soldiers and three civilians were killed by the attackers.

25. A state of maximum alert was declared by the authorities and large numbers of soldiers were brought into the various towns and villages, arresting about 550 people. During the hunt for the rebels, the security forces killed two civilians, presumed members of the attacking commando - the young Gustavo Mulé, in the outskirts of Belebú village, and Marcos Manuel Rope Bitá in the environs of Rebola. According to evidence gathered by the mission in situ in March 1998, both young men were wounded when captured and the actual causes of their deaths are unknown. Later, another three civilians died after being detained and taken to the Malabo central police station. They were: the nurse Ildefonso Bocubo, who was tortured to death, according to his family; a young man from Belebú village, Irineo Barbosa, who had been in good health at the time of his detention, according to testimony gathered by the mission in the village where he was captured; and Carmelo Djek Bohopa, arrested as he was leaving a church in the city of Malabo. No autopsy was performed to help ascertain the cause of death in any of the cases.

26. In the addendum to his previous report (E/CN.4/1998/73/Add.1, paragraph 11), the Special Rapporteur stressed that the rapid reaction of the President of the Republic and the Government calling for calm averted more serious problems which could have had major repercussions in view of the climate on the island of Bioko and the risk of a slide into ethnic conflict between the Fang and the Bubi segments of the population. The intervention of the Republic's highest authorities prevented the excesses from becoming more serious.

2. Repression that followed the attacks of 21 January 1998

27. After the above incidents, the places where they occurred, the villages where some of the attackers took refuge and others where there is known opposition to the Government from the Bubi ethnic group were immediately occupied by large numbers of soldiers and members of the security forces, accompanied by persons not in uniform. These contingents, which were pursuing the "rebels" and anyone helping or supporting them, occupied the villages for two weeks, entered houses without a search warrant, often breaking down doors and smashing windows, and harassed the civilian population, engaging in

looting, as well as taking money, goods and animals from the inhabitants, from whom sums of money were demanded in some cases under threat of arrest.

28. Of the 550 persons originally arrested, 110 were kept in prison, under investigation, the rest being released. To begin with, they were concentrated in the general police station and public prison of Malabo (known as "Black Beach") in conditions of complete lack of hygiene, overcrowding and inadequate food. Many of the prisoners were subjected to severe torture and beatings, showing physical signs of injury and ill-treatment (on their arms and legs). They were also held incommunicado for a long time, making it enormously difficult for the lawyers of many of the detainees, Mr. José Oló Obono and Mr. Fabián Nsue Nguema, to provide them with legal assistance.

29. The commandos who led the events of 21 January belonged entirely to the Bubi ethnic group. The Government immediately accused them of belonging to the Movimiento para la Autodeterminación de la Isla de Bioko (MAIB), although the Special Rapporteur has been unable to verify their membership of that movement, which is denied by the MAIB authorities. The villages that were occupied militarily and whose civilian population was subjected to abuses also belong, like the persons detained, to that ethnic group.

3. Military trial of the "rebels"

30. Those accused of the "attempted rebellion" on 21 January were tried summarily and publicly by a court martial held in Malabo, in May 1998, at the "Marfil" cinema. Military court proceedings in Equatorial Guinea, given their very summary nature and the restrictions placed on the right of defence, in particular with regard to the production of exculpatory evidence by the defendants and communication between lawyers and their clients, tend to affect strict compliance with due process of law. This view has been taken by Amnesty International, which sent two observers to the trial and also reported the lack of correspondence in many cases between the severe sentences passed and the specific actions in respect of which charges had been brought.

31. The judgement in this so-called "macro trial" on 29 May 1998 imposed severe sentences. They included 15 death sentences, for Epifanio Mohaba Babo (tried in absentia), Remigio Meta (tried in absentia), Anastasio Bitá Rope (tried in absentia), Guillermo Salamon Echuaca ("Alex"; tried in absentia), Alejandro Mbe Bitá, Leoncio Kota Ripola, Norberto Biabeda Bela, Reginaldo Bosio Davis, Ruben Mosibe Biancho, Ramón Riasa Malabo, Emilio Rivas Esara, Gabriel Borico Baja, Bienvenido Samba Momesore, David Sonde Muachuku and Domingo Effiong Iboc. The other sentences passed by the court martial imposed prison terms of 26 years in 37 cases, 12 years in 14 cases and 6 years in the remaining cases.

32. The President of the Republic, by decree No. 140/1998 of 9 September, commuted the death sentences to life imprisonment. These commuted sentences are welcomed by the Special Rapporteur - and he made this known to the Government - as a highly positive gesture in which the Head of State heeded the requests of the international community and thereby contributed to the pacification of relations with the Bubi ethnic group, to which, as already indicated, the convicted persons belonged.

4. The death of Martín Puye Topete

33. This person, a known opponent of the Government whose constant arrests were noted in the Special Rapporteur's previous reports, was tried in the military court as one of the ring-leaders of the attempted rebellion on 21 January 1998 and sentenced in May to 26 years' imprisonment; in July he died at the Malabo regional hospital. According to the medical report issued on 14 July 1998 by the hospital authorities, he died as a result of "hepatic failure caused by virus B". The Special Rapporteur believes that the acuteness of such an illness cannot be dissociated from the conditions of complete lack of hygiene, overcrowding and inadequate nutrition in which the prisoners - including Martín Puye - were kept at the general police station and then in the public prison at Malabo, as indicated in paragraph 28 of this report.

5. New arrests after the events of 21 January 1998

34. Persons belonging to the Bubi ethnic group were arrested in the second half of November 1998, on the island of Bioko, and accused of concealing the fugitive ring-leaders of the attempted rebellion on 21 January (Guillermo Salamon Echuaca ("Alex") and two others), who had been convicted in absentia. The detainees have undergone preliminary investigation prior to their prosecution. There are 23 men and 7 women being kept in the Malabo general police station, where the Special Rapporteur and members of the mission were able to speak to them in private. Most of the male detainees showed clear signs of injuries on their arms and legs caused as a result of the bonds by which they were lifted from the ground as a form of torture to make them talk. They are accused of having helped to conceal the aforementioned rebel leaders and of having enabled them to flee in separate boats (dugout canoes) to Cameroon. The group includes four Cameroonians allegedly involved in the acts in question.

G. Other political arrests

35. Citizens Guillermo Nguema Ela (former Minister) and Felipe Ondó Obiang Alogo (former Minister and former President of the Parliament), leaders of the Fuerza Democrática Republicana (FDR) group, which has not thus far been recognized by the Government as a political party, have again been subjected to imprisonment. Their cases were discussed in the report submitted to the Commission in 1998 (E/CN.4/1998/73, paragraph 57), although at the time of his last visit they had been released on parole. As they had stated when interviewed at Malabo prison, these persons were convicted in an irregular trial, on the motion of the Attorney-General, for the offence of making "false accusations and complaints"; they were sentenced to prison terms of two years and six months, and were each fined CFAF 200,000 (US\$ 1 = CFAF 600) and together ordered to pay a further CFAF 25 million (about \$42,000 at the current exchange rate) in compensation to the State because of a communication signed by them in September in which they complained of having been subjected to extremely close surveillance and control and feared that they would be implicated in activities that might be presented as a "coup d'état". The convicted persons have described the case as one of political persecution, on account of their having sought to express their opinions freely and make their ideas known to the public. The Special Rapporteur, who is in possession of a

copy of the judgement, cannot but regret this sentence since, in his view, the text of the communication points to no criminal activity that would be punishable under the penal law, but only to the exercise of rights recognized by the Fundamental Law, such as the right to freedom of expression. The conviction has been appealed to the Supreme Court by the lawyer defending the two men.

36. The well-known criminal lawyer and secretary-general of one of the parties awaiting recognition, José Oló Obono, is now in the Malabo public prison, having been sentenced to five months' imprisonment, fined CFAF 200,000 and ordered to pay a further CFAF 15 million (about \$25,000) in compensation to the State for the offence of "insulting the Government". It appears from the judgement delivered by the Appeal Court in the island region - of which a copy is in the Special Rapporteur's possession - that the lawyer levelled hard and strong criticism at the authorities during an interview he gave to the Spanish press in connection with the death of his former client, Martín Puye Topete (see paragraph 33). In the Special Rapporteur's view, the case involves no crime under the penal law, but only the exercise of rights recognized by the Fundamental Law, such as the right to freedom of expression. At the same time, the judgement calls for the person in question to be punished for having attempted to perform freely his functions as a lawyer acting for the family of his former client, Martín Puye Topete, which was asking for the return of the latter's body (principles 16, 17 and 23 of the Basic Principles on the Role of Lawyers).

37. Another serious incident occurred in early November 1998 when four members of the Convergencia para la Democracia Social (CPDS) party attempted to bring into Equatorial Guinea from Gabon 60 copies of a book published in Spain under the title "Equatorial Guinea at the crossroads". The persons detained in this connection on 1 November were Alberto Mbé, his wives Asunción Nsang Eló and María Luisa Abuy Ekó, and Benjamín Mbá, residents of the village of Acoá, near Acurenam. The books were intended for the architect Amancio Gabriel Nzé, the CPDS leader and a former candidate for the office of President of the Republic of Equatorial Guinea. All were held at Bata police station in the Río Muni region. The first three were beaten and insulted by the authorities arresting them in the village of Acoá. The Special Rapporteur went to the Bata general police station and was able to speak to Amancio Gabriel Nzé and the two women mentioned, but not to Alberto Mbé or Benjamín Mbá, who were not there, as he discovered, and the authorities were unable to account for their whereabouts. The Special Rapporteur wishes to express his concern about these matters: first, because it was not possible to find out where the two detainees (Alberto Mbé and Benjamín Mbá) had been taken; and secondly because, according to the Bata police authorities, no criminal charges had been brought against the detainees, although they had been in custody for more than 40 days by the time of his visit.

H. Prisons of Malabo and Bata

38. During its visit to the Malabo public prison, the mission interviewed the inmates individually and confidentially, and was able to establish that there has been no improvement in the situation as described in the previous report (E/CN.4/1998/73, paragraph 49-51). The lack of medical care and very inadequate nutrition are compounded by overcrowding, the prison population

having increased from 32 inmates in December 1997 to a current total of 123 inmates, including both men and women. The daily diet remains inadequate and is limited to two loaves a day, with a meagre portion of sardines and rice once every three or four days, although this does not reach all the inmates. Medical care also continues to be inadequate and there is still a shortage of the most essential medicines (against malaria, which affects virtually everyone) for treating the prisoners.

39. The Special Rapporteur was able to confirm that the treatment received in prison - aside from the serious shortcomings already noted - was generally good and none of the detainees complained of harassment or ill-treatment. The exception relates to the 11 persons who were sentenced to death by the court martial (the "macro trial" of 29 May 1998) and whose sentences were commuted by the President of the Republic on 9 September to life imprisonment (see paragraphs 31 and 32). The 11 inmates are confined 24 hours a day in very small cells (2 x 1.4 metres), with only a small inlet for air and light in the roof; they are subjected to the highest temperatures prevailing in the place, prevented from having visits and kept completely isolated, including from other inmates. They leave their cells only to wash, perform their physical needs and sometimes eat. This treatment, which may be described as cruel and inhuman, infringes the international standards for the treatment of prisoners.

40. Inmates continue to perform unpaid compulsory labour outside the prison grounds, with the exception of the 11 persons mentioned in the preceding paragraph, who are not allowed to leave the prison compound. The Special Rapporteur has indicated in previous reports that the fact that work exists and is being performed outside the prison walls is very positive and shows that the prisoners are humanely treated. However, he has also pointed out that prisoners should be remunerated for this work so that they can provide financially for their families and that the work should come under the control of the judicial authorities, which is not currently the case. In this connection, the authorities should be reminded that the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations in 1957 and 1977 provide examples and guidelines for action by Governments in prison matters (see, in particular, articles 75 and 76).

41. During his visit to the prison at Bata, the Special Rapporteur found a situation similar to that obtaining at the Malabo prison as regards serious shortcomings in nutrition and medical care for the inmates, as well as a lack of hygiene. The problem seems to be on a quantitatively smaller scale, since the male prison population consists of only 16 inmates. At the time of the mission, no women were to be found in the prison although, according to information received from the male inmates, six women prisoners had been removed the day before, those cases relating to non-payment of bride price, a matter on which questions had already been put by the Special Rapporteur when he visited the Malabo prison (this point is considered in paragraphs 49 and 50).

I. Other persons deprived of their liberty

42. There were no major trials other than those mentioned, nor any cases of prolonged detention. However, leaders and activists of opposition political parties in the Rio Muni region have been deprived of their liberty for short periods owing to decisions by the "peripheral authorities". Such cases of

deprivation of liberty have often been accompanied by physical ill-treatment and threats to deter the detainees from exercising their political rights. The practice of imposing fines as a substitute for detention has continued. These heavy fines, which are fixed arbitrarily by the peripheral (non-judicial) authorities, must be paid before freedom can be regained. The Special Rapporteur wishes to draw attention once again to his previous comments regarding the lack of experience of democracy in these rural areas (see E/CN.4/1998/73, paragraph 48). In the mission's opinion, the smaller number of incidents recorded in 1998 is mainly attributable to the lower level of activity of the political parties in a non-election year.

43. These arrests contravene the legislation in force and also run counter to the agreements reached in April 1997 between the Government and the opposition. In those agreements the Government committed itself to putting an end to "intermittent detentions". In addition, they are contrary to the provisions of Decree No. 75 of 13 May 1997, which sets out the undertaking by the Government and the political parties to prohibit any action or act of commission or omission intended to restrict the free exercise of fundamental rights and freedoms and to ensure that the political parties can pursue their activities freely throughout the national territory. By that instrument, the Government undertook to punish the arbitrary acts of public officials and law enforcement officers which impair or restrict guaranteed rights and required the authorities to refrain from any interference that might make it difficult for the political parties to comply with article 9 of the Constitution.

44. The Special Rapporteur has already noted the use of torture on persons arrested after the events of 21 January 1998 and those detained in Malabo in November 1998 in connection with the same events, as well as in the case of the four persons detained in the mainland region - in the village of Acoá - for bringing copies of a book into the country (see paragraph 37). In this respect, the Special Rapporteur wishes to draw the attention of the authorities to the imperative need to combat the impunity enjoyed by agents of the State who violate human rights. He also wishes to refer to principles 11, 18 and 19 of the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the United Nations in November 1985. Those principles establish the obligation of States to ensure that the victims receive restitution, compensation and assistance.

IV. SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Economic and social situation

45. There has been no change in relation to the extreme poverty which forms an obstacle to human development and is undermining the realization of human rights in the country. As the United Nations Development Programme (UNDP) indicated in its Assessment Note for the establishment of the framework of cooperation with Equatorial Guinea (April 1997), inequalities continue to abound, with more than 80 per cent of the national income being amassed by 5 per cent of the population (section II.B.7).

46. In this respect, Equatorial Guinea ranks among the countries with the lowest human development index. The illiteracy rate is 22.9 per cent and only 32 per cent and 37 per cent of the population have access, respectively, to

drinking water and health services. These last two percentages are of particular significance inasmuch as they are directly related to the incidence of the transmissible diseases which are the commonest causes of death in the country. According to the General Population Census of 1994, Equatorial Guinea has a population of 406,151 (48 per cent males and 52 per cent females), with a growth rate of 2.9 per cent per year, which implies a doubling of the population within 30 years.

47. Since October 1996, the Republic of Equatorial Guinea has been a significant oil producer, with a current output of almost 90,000 barrels per day. At the time this report was prepared, no perceptible improvement in the quality of life of the people had resulted from the large fiscal revenues derived from oil production and exports. Indeed, there is no major investment in health, education, housing or public works.

B. Health

48. Despite the efforts made by the Government and the organizations supporting it (principally the World Health Organization) to develop this sector, the health statistics are still worrying because of the great prevalence of infectious diseases, especially malaria, the inaccessibility of rural health services and poor hygiene. According to WHO, the main causes of death are: malaria, acute respiratory infections, forms of anaemia, malnutrition, hepatic abscesses, other respiratory diseases, gestoses, arterial hypertension and AIDS. The infant mortality rate is 111 per 1,000, the maternal mortality rate is 400 per 100,000 and life expectancy averages about 55 years. In this sector, independent experts have noted an improvement in hospital facilities compared with previous years.

C. Status of women

49. This mission has again noted that women are being kept in prison for unspecified periods because their families have not restituted to their former husbands, upon dissolution of the union, the amount of the bride price received at the time of ratification of the marriage. This kind of traditional and customary practice, which may be equated with imprisonment for debt and is furthermore of unspecified duration ("until she returns the bride price"), constitutes a violation of article 11 of the International Covenant on Civil and Political Rights, to which Equatorial Guinea has acceded, and of the principles requiring the establishment of a time limit for sentences.

50. Two women, Pacificación Nchama Ondó and a 15-year-old minor called Ester, are currently being held in the Malabo public prison for the aforementioned reason. The Special Rapporteur raised these two cases of "imprisonment for debt" in a note to the Minister of Justice and to the Minister for Social Affairs and the Status of Women. The latter, in an interview with the mission, said that she knew nothing about the circumstances; the Special Rapporteur made a point of indicating the seriousness of this recurrent practice.

51. In connection with another matter, the Special Rapporteur conveyed to the Minister his concern about information received (from UNICEF) regarding

the interrelated issues of the rising school drop-out rate among females and the growth of juvenile prostitution. This was described by the high-ranking official as a minor problem that is under control.

52. It is calculated that 52 per cent of the total population (406,151 inhabitants) are female, of whom 84,000 are of child-bearing age. According to the second Population and Housing Census (1994), 96.5 per cent of males can read and write, as against only 71.5 per cent of females. While a gender balance exists in primary education, this balance is reduced drastically at the secondary and higher levels, with females accounting for 35.3 per cent of pupils at the intermediate level and only 9.8 per cent of students in higher education (source: "Seminar on Gender, Population and Development", Ministry for Social Affairs and the Status of Women, UNFPA, UNDP and UNICEF, Malabo, 1998).

53. The Special Rapporteur considers it appropriate to reiterate the importance of the significant data on the status of women contained in an April 1997 UNDP Assessment Note for the country cooperation framework. The relevant part of this document was transcribed in the Special Rapporteur's previous report (E/CN.4/1998/73, paragraph 60).

54. In the area of health, the statistics show that the calorie intake of the female population in Equatorial Guinea is significantly lower than the recognized international indicators. In addition, the incidence of sexually transmitted diseases continues to be very high among women in this country. Despite the efforts made by the State and the international cooperation agencies, women are still exposed to high risks associated with multiple parities, badly timed or early pregnancies and a lack of prenatal and post-natal care. The maternal mortality rate is estimated at 400 per 100,000. Furthermore, there is insufficient family planning and no adequate sex education for the female population. This accounts for the underutilization of modern contraceptive methods among females aged 15 to 44 years, with only 0.7 per cent of them using such methods.

55. With regard to discrimination against women in law, a report entitled "Situation of the Administration of Justice in Equatorial Guinea" (August 1998) produced by a UNDP expert, at the request of the Supreme Court, observes: "Customary law needs to be considered in the light of fundamental rights. For example, it should be mentioned in particular that it conflicts with the Convention on the Elimination of All Forms of Discrimination against Women and the principle of the legality of offences and penalties. Concerning the first aspect, customary law, particularly in the case of the Fang community, has some features that discriminate against women, who are at a disadvantage, for example, as regards the custody of children and in relation to adultery; the law shows clearly in this case that discrimination against women is not an exclusive feature of customary law, but is also reflected in written law. For example, in the case of adultery, which is punishable under the Penal Code, for an offence to have been committed it is enough for the woman to have had sexual intercourse with a man other than her husband, whereas in the case of the man there needs to have been a long relationship involving cohabitation or maintenance."

56. The positive points to be mentioned are the existence of a ministry specifically for women, and the efforts it is making to overcome this situation of discrimination from which women in Equatorial Guinea suffer in practice and within society, notwithstanding the equality assured by most legal provisions. This commendable effort must be continued, as the situation is still greatly in need of being remedied.

D. Ethnic diversity and conflict

57. The Commission on Human Rights, in its resolution 1998/71, invited Equatorial Guinea to become a party to the International Convention on the Elimination of All Forms of Racial Discrimination, which it has not yet done. The Special Rapporteur has informed the Commission in previous years of the existence of a situation in which persons belonging to the Bubi ethnic group on the island of Bioko and persons originating from the island of Annobon are discriminated against and subjected to inferior treatment. The persistence of this situation was confirmed during the latest visit. It has given rise to tension in the case of the Bubis, as a result of the regrettable violent incidents caused in the early hours of 21 January 1998 by persons belonging to that ethnic group, and the repression unleashed by the army and security forces in their villages. Generally speaking, the victims of such abuses are actual or presumed members or sympathizers of the Movimiento para la Autodeterminación de la Isla de Bioko (MAIB).

58. As pointed out in previous reports, nothing should prevent the Bubis from campaigning for the exercise of the right of self-determination, which international law recognizes in principle for every "people", and from being able to act freely without discrimination or repression, subject to the limitations on this right specified by the Committee on the Elimination of Racial Discrimination, which functions under the International Convention on the Elimination of All Forms of Racial Discrimination. These limitations, as defined by international law, are concerned with safeguarding the territorial integrity, political unity and sovereignty of States, and are therefore opposed to any unilateral declaration of secession from a State.

59. Accordingly, the Special Rapporteur urged the authorities of Equatorial Guinea, in his interviews with them, to encourage forms of functional autonomy that would guarantee the participation of the members of the Bubi ethnic group in society, while preserving the cultural, religious and political institutions proper to their identity as a people and their traditions as very ancient inhabitants of the island of Bioko.

V. CONCLUSIONS

60. As indicated at the beginning of this report (paragraph 9), the investigations carried out during this new mission to Equatorial Guinea lead the Special Rapporteur to draw the following conclusions:

- (a) He notes a disturbing lack of progress towards democratization;

(b) With regard specifically to human rights, after the attempted rebellion of 21 January 1998, there has been a setback with cases of violations of those rights affecting not only individual guarantees but also the institutional and social life of Equatorial Guinea;

(c) He feels bound to reiterate the concern expressed in Commission resolution 1998/71 over "the continuing existence of deficiencies and conditions that lead to violations and abuses of human rights, including cases of prolonged incommunicado detention". Torture also appears to be a very frequent practice during police interrogations;

(d) In order to overcome the difficulties, intensive technical assistance will be needed from the Office of the United Nations High Commissioner for Human Rights, including training courses, seminars and workshops, with a view to removing the major political, cultural and social obstacles to the consolidation of the democratic process and the effective exercise of human rights.

61. It does not appear that the independence of the judiciary has been strengthened, or that the functional deficiencies noted in the Special Rapporteur's previous report (E/CN.4/1998/73) have been remedied. With regard to the deficiencies of the judiciary, the above-cited report entitled "Situation of the Administration of Justice in Equatorial Guinea" (August 1998) provides a clear diagnosis in paragraph 55, as follows: "The distinguishing characteristic of the judiciary in Equatorial Guinea is its weakness: weakness in relation to the other powers of the State because of its vulnerability to political interference; weakness due to the insecurity associated with uncertainty as to the provisions in force; weakness because of its meagre budget and because of the lack of a system of administration; and, lastly, weakness stemming from the absence of a policy of training staff in the administration of justice."

62. The proceedings for recognition of non-governmental human rights organizations, which applied to the Ministry of the Interior for recognition several years ago, are still at a virtual standstill. The applications for legal authorization of other NGOs concerned with various social issues are also still pending. In his previous report, the Special Rapporteur again referred to General Assembly resolution 40/123 of 13 December 1985, which draws the attention of States to "the constructive role that national non-governmental organizations can play", as reaffirmed by the Vienna Declaration and Programme of Action of 1993. The Parliament of Equatorial Guinea recently passed a law on non-governmental organizations, the text of which was not made available to the Special Rapporteur. This instrument, being similar to the known bill, regrettably restricts the activities of NGOs and lacks the scope that would enable them to undertake broad and effective activities.

VI. RECOMMENDATIONS

63. Taking into account those recommendations formulated by the Commission on Human Rights in its resolution 1998/71 which have not been sufficiently

implemented by the Government and the Parliament of Equatorial Guinea, and other new ones that are now essential in view of the present situation, the Special Rapporteur makes the following recommendations:

- (i) Laws, decrees and governmental acts should be published periodically and regularly;
- (ii) Legislative and administrative measures should be taken to guarantee the complete independence and impartiality of the judiciary;
- (iii) The military courts should be limited to trying strictly military offences committed by military personnel;
- (iv) The authorities should take steps to put an immediate end to all acts of torture or ill-treatment, and should investigate, try and punish those responsible for such offences, as well as provide reparation for the victims. To secure the rule of law it is essential to terminate the impunity of those responsible in various ways for violations of human rights;
- (v) The Government of Equatorial Guinea should continue the dialogue with all political parties to ensure the transparency of the electoral process leading to a new legislature within the framework of plurality and democratic coexistence. Furthermore, the State's legislative and administrative structure should be improved to ensure the exercise of political rights;
- (vi) Recognition should be given to non-governmental human rights organizations, which are essential for the vitality of a democracy;
- (vii) Equatorial Guinea should accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the International Convention on the Elimination of All Forms of Racial Discrimination. These conventions would facilitate the realization of the rights and guarantees to which they refer;
- (viii) Efforts directed at the elimination of all inferior treatment and discrimination of which women are victims should be continued until they achieve equal opportunities with men and are fully integrated into the process of socio-economic, cultural and political development of the country;
- (ix) The necessary conditions should be promoted to ensure that everyone can enjoy economic, social and cultural rights and to enable broad segments of the population of Equatorial Guinea to escape from the extreme poverty in which they are living;
- (x) In accordance with Commission on Human Rights resolution 1997/46, which encourages cooperation between the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme, the Government of

Equatorial Guinea should be provided with the advisory services and technical cooperation it has requested. These services and cooperation will be arranged by the Office of the High Commissioner and should include courses of education and training in human rights. One particular goal will be to enhance the administration of justice. Assistance should also be directed towards strengthening the capacity of NGOs and other groups of civil society so that they have the requisite room for action to promote respect for human rights and an improvement in the quality of life of the population.
